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Land-O-Sun Dairies d/b/a Pet Dairy and International Brotherhood of Teamsters Local Union 549. Case 10–CA–35522

October 28, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

On August 10, 2005, Administrative Law Judge George Carson II issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Land-O-Sun Dairies d/b/a Pet Dairy, Kingsport, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. October 28, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Carla L. Wiley, Esq., for the General Counsel.
Stephen M. Darden, Esq., for the Respondent.
T. C. Bundrant, for the Charging Party.

DECISION

STATEMENT OF THE CASE

GEORGE CARSON II, Administrative Law Judge. This case was tried in Kingsport, Tennessee, on June 29, 2005, pursuant to a complaint that issued on April 19, 2005.¹ The complaint alleges that the Respondent failed and refused to provide the Union with requested relevant information in violation of Sec-

¹ All dates are in 2004 unless otherwise indicated. The charge in Case 10–CA–35522 was filed on March 11, 2005.

tion 8(a)(1) and (5) of the National Labor Relations Act. The Respondent’s answer denies that it violated the Act. I find that the Respondent did violate the Act substantially as alleged in the complaint.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the brief filed by the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Land-O-Sun Dairies d/b/a Pet Dairy, the Company, is a Delaware corporation engaged in the processing and distribution of dairy products at various locations including its facility in Kingsport, Tennessee. The Company, in conducting its business, annually purchases and receives goods, products, and materials valued in excess of \$50,000 directly from points located outside the State of Tennessee. The Respondent admits, and I find and conclude, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I find and conclude, that International Brotherhood of Teamsters Local Union 549, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

The Company and the International Brotherhood of Teamsters have an ongoing bargaining relationship. The current collective-bargaining agreement was entered into in early 2005 and was retroactive to October 1. The prior agreement expired on September 30. Both agreements recognize the Teamsters as the exclusive collective-bargaining representative of the Company’s production, distribution, maintenance, and clerical employees in Tennessee, North Carolina, South Carolina, Virginia, and Georgia. The employees are represented by six local unions. Local 549, the Union, represents route salesmen at Kingsport, Tennessee, and various other locations including locations in Virginia, North Carolina, and Georgia.²

Negotiations for the current agreement began in August, but agreement was not reached prior to September 30 and negotiations continued. At a negotiating session on November 22 in Charlotte, North Carolina, representatives of the Company and of the various local unions were present, including Scott Armstrong, secretary-treasurer of Local 549, and T. C. Bundrant, president and business manager of Local 549. At that meeting, the parties discussed, among other matters, the commissions paid to route salesmen. Vice President of Operations Dan Nix stated that the Company was paying full service commission to route salesmen for its private label brand, County Fresh, at Dollar General stores. Scott Armstrong “leaned over” and told President Bundrant that they needed to confirm that route men were “getting full commission for that store,” that he was not aware of that. Thereafter, the Union learned that its job stewards were uncertain whether they were receiving the full com-

² The contract refers to route salesmen and route driver salesmen. Testimony refers to route salesmen, route men, and route sales drivers. The interchangeable terminology refers to the same position, distribution employees who deliver the dairy product to stores on their routes.

mission.

President Bundrant contacted Charlie Bem, supervisor of the route salesmen, and requested the pay records of the route salesmen. Bem informed Bundrant that he would have to contact Director of Risk Management and Human Resources Larry Coley for those records. On December 13, President Bundrant sent the following letter to Director Coley:

I have had numerous requests from route drivers about the way that they are being paid for the Dollar General Stores.

Dan Nix stated in negotiations that they were being paid as "full service." I asked Charlie Bem for a copy of the pay records for all route drivers and he advised me that I must request this information from you.

In checking with Kingsport, I believe they started servicing the Dollar General Stores in March. I am hereby requesting copies of the pay records from Jan. 1, 2004[,] forward for all locations covered under Local #549.

I believe they were paid wrong in the beginning, but then paid correctly sometime later. After I review this information I will be in touch with you. Please advise receipt of this request. Thank you for your cooperation in this matter.

The Company did not respond to the foregoing letter. President Bundrant thereafter called Director Coley on three separate occasions. The first time he called Coley advised that he was going on vacation and would get back after his return. He did not do so. Bundrant called again. Coley stated that he was "trying, getting up the records." The Union received nothing. Bundrant called again. Coley stated that he would send him "a letter." No letter was received.

Director Coley acknowledged receiving the letter of December 13. He did not deny receiving the telephone calls to which President Bundrant testified, and I credit Bundrant's credible uncontradicted testimony regarding those calls. Coley testified that he did not provide the information because the request was "very broad" and appeared to be a "fishing expedition." He did not claim that he communicated those concerns to the Union in any way.

At the hearing, counsel for the Respondent examined President Bundrant regarding the language in the charge referring to the information being "necessary to file a grievance." President Bundrant answered that he "requested the information to see if the route men . . . were being paid right," and that, if they were, "that was the end of the story."

The Company presented evidence that the Union had previously filed grievances without having requested or received information establishing that the contract had been violated.

Vice President Nix, now a company consultant, testified that, pursuant to complaints from route salesmen relayed to him by Supervisor Charlie Bem, the Company in "late July, early August" notified its division managers to begin paying full commission for delivering its private label brand, Country Fresh, at Dollar General stores. No document showing the specific date of that direction was presented, nor were any records establishing when the full commission began to be paid offered into evidence. Nix recalled that, sometime after November 22, Bem called him stating that a union steward had requested to see his pay records "to verify what he's being paid on Dollar General," and he told Bem to show that steward his own pay records.

Nix testified that Director Coley informed him about the Union's request of December 13 on or about December 18 and

that it "was so broad that, actually, it stunned me." He saw the letter 2 months before this hearing. Nix did not contact the Union for clarification nor did he direct Coley to contact the Union for clarification. No information was provided.

B. Analysis and Concluding Findings

The Union's December 13 letter refers to Nix's statement at the bargaining table regarding payment of full commission for Dollar General stores and states that Supervisor Bem, supervisor of the route salesmen, had directed the Union to make its request to Director Coley, and that, upon review of the requested records, the Union would "be in touch." The foregoing refutes any contention that the Union was engaged in a "fishing expedition." The Union was seeking to verify the representation made by Vice President Nix. It has been unable to do so because the Respondent did not respond to its request for relevant information. It is well settled that a union's request for information relating to the wages of bargaining unit employees is presumptively relevant and, on request, must be provided by the employer. *F. A. Bartlett Tree Expert Co.*, 316 NLRB 1312, 1313 (1995). The Union's letter of December 13 made clear the purpose of the request over and above the presumption of relevance.

Although the complaint alleges that the Union requested the "pay records of unit employees" and one sentence in the Union's December 13 letter requests "pay records for . . . all locations covered under Local #549," I find that a fair reading within the four corners of the Union's letter establishes that the request was for the pay records of all route salesmen serving Dollar General stores within the jurisdiction of Local 549 from January 1, 2004.

The Respondent, in its brief, citing the testimony of Nix that the request was so broad that it "stunned" him, argues that the request was for the records of all employees represented by the Union. If the Respondent truly believed that the request was for pay records of all employees, Director Coley could have expressed the Respondent's concern regarding the scope of the request to President Bundrant in one of their three telephone conversations. It was incumbent upon the Respondent to seek clarification rather than ignore the request. An employer "may not simply refuse to comply with an ambiguous or over broad information request, but must request clarification and/or comply with the request to the extent that it encompasses necessary and relevant information." *Holiday Inn Coliseum*, 303 NLRB 367 fn. 6 (1991). As pointed out in *Honda of Haywood*, 314 NLRB 443, 450-451 (1994), "If a party 'does wish to assert that a request for information is too burdensome, this must be done at the time information is requested and not for the first time during the unfair labor practice proceeding.'" [Citations omitted.]

The Respondent, citing the language on the charge that the information was "necessary to file a grievance," argues that the Union has, on various occasions, filed grievances and then sought the information necessary to support the grievance. Thus, the Respondent argues, the information sought was not "necessary to file a grievance" and was, therefore, not relevant. In support of that argument, the Respondent cites *Tyson Foods*, 311 NLRB 552, 569 (1993), in which, regarding a portion of the information requested by the union therein, the administrative law judge noted that there were "no pending grievances or contractual disputes to which the information sought could be related" and that the union "offered no evidence beyond the

requests themselves concerning why the information was relevant and necessary.” In this case the Union did explain why the information was necessary. The letter of December 13 states that the Union believed that the employees were “paid wrong in the beginning, but then paid correctly sometime later.” Although Nix testified that he directed the division managers to begin paying full commission for delivery of Country Fresh products to Dollar General stores in “late July, early August,” the Union had no records establishing that this had occurred. It is immaterial that the Union has sometimes filed grievances without already possessing the information establishing a contract violation. As President Bundrant cogently testified, the Union “requested the information to see if the route men . . . were being paid right,” and that, if they were, “that was the end of the story.” The Union did not wish to file an unnecessary grievance. It sought to obtain the facts before filing a grievance. As stated by the Board in *Schrock Cabinet Co.*, 339 NLRB 182, fn. 6 (2003), “It is well established that ‘an employer is obligated to provide information which is relevant to a union’s decision to file or process grievances.’” *Beth Abraham Health Services*, 332 NLRB 1234 (2000) (citations omitted). [Emphasis added.]

The Respondent’s final argument asserts that any grievance would be time barred because “it is undisputed that the commission rate adjustment occurred in July or August.” The Union’s request was to determine whether employees were correctly paid. Although Nix testified that he directed payment of the full service commission in late July or early August, there is no evidence regarding when or if that directive was implemented at all locations. That is what the information sought by the Union would show. The information sought would have, as President Bundrant explained, established whether the Respondent had properly paid the employees that the Union represented. Upon review of the requested information, the Union could determine whether they had been and, if they had not been paid properly, could decide upon the course of action it wished to take. Whether a grievance would be timely, i.e., whether the critical date would be the date of any improper payment or the date that any improper payment came to the attention of the Union, would be an issue for an arbitrator. The Respondent’s argument fails to recognize that the Board evaluates information requests on the basis of the relevance of the information sought, not the merit of a grievance. “[A]n employer is required to provide such [relevant] information regardless of the potential merits of any particular grievance.” *Schrock Cabinet Co.*, supra at fn. 6, citing *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994). See also *Postal Service*, 337 NLRB 820, 822–823 (2002).

Insofar as the complaint alleges failure to provide pay records for “unit employees,” I shall recommend that the allegation be dismissed to the extent that the request extends to employees other than route salesmen servicing Dollar General stores. As discussed above, a fair reading within the four corners of the Union’s information request establishes that the request was for the pay records of all route salesmen serving Dollar General stores within the jurisdiction of Local 549 from January 1, 2004. The Respondent never advised the Union that it considered the request to be overly broad and never sought clarification of the request. The Respondent ignored the request despite President Bundrant’s contacting Director Coley on three occasions. I find that the pay records of all route salesmen serving Dollar General stores within the jurisdiction of Local 549

from January 1, 2004, and thereafter was and is necessary and relevant for the Union to confirm, as represented by the Respondent, that employees were and are being paid full commission when servicing those establishments. By failing and refusing to provide that information, the Respondent violated Section 8(a)(5) of the Act.

CONCLUSION OF LAW

By failing and refusing to provide the Union with the information it requested on December 13, 2004, the information being relevant and necessary to the Union as the collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having failed and refused to provide the Union with the pay records of all route salesmen serving Dollar General stores within the jurisdiction of Local 549 from January 1, 2004, to the present as initially requested by the Union on December 13, 2004, it must promptly supply that information. The Respondent must also post an appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

The Respondent, Land-O-Sun Dairies d/b/a Pet Dairy, Kingsport, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with International Brotherhood of Teamsters Local Union 549 by failing and refusing to provide requested information that is relevant and necessary to that Union as the collective-bargaining representative of its production, distribution, maintenance, and clerical employees.

(b) In any like or related manner interfering with, restraining, and coercing employees in the exercise of rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Promptly furnish International Brotherhood of Teamsters Local Union 549 with the pay records of all its route salesmen serving Dollar General stores within the jurisdiction of Local 549 from January 1, 2004, to the present.

(b) Within 14 days after service by the Region, post at all its facilities at which route salesmen are represented by International Brotherhood of Teamsters Local Union 549 copies of the

³ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 13, 2004.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found. Dated, Washington, D.C. August 10, 2005.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with International Brotherhood of Teamsters Local Union 549 by failing and refusing to provide requested information that is relevant and necessary to the Union as the collective-bargaining representative of our production, distribution, maintenance, and clerical employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce any of you in the exercise of your rights guaranteed by Section 7 of the Act.

WE WILL promptly furnish the Union with the pay records of all our route salesmen serving Dollar General stores who are represented by the Union from January 1, 2004, to the present.

LAND-O-SUN DAIRIES D/B/A PET DAIRY